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Sumter County Policy on Environmental Due Diligence re: Real Estate and Right of Way Transactions

Background:

“Environmental due diligence is the collection and assessment of data relative to environmental conditions or impacts, prior to a transaction, to identify and quantify environmental-related risks and liabilities.”

This due diligence is a necessary response to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) also known as the Superfund Law.

The due diligence is manifested in the form of an Environmental Site Assessment (ESA), either a Phase I (ASTM E 1527-05), and/or Phase II (ASTM E 1903).

A Phase I ESA is a report prepared by a professional that identifies “potential or existing environmental contamination liabilities.” It includes both the land and any improvements on the land. It normally does not include physical sampling, or collection of air, ground, water or building materials, or chemical analysis. It is an assessment of the site for potential contamination. The Phase I must include the EPA’s new requirement for “All Appropriate Inquiries” (AAI) which states: “The inquiry of the environmental professional should include an opinion regarding additional appropriate investigation, if any.” This does not mandate a Phase II ESA, but it could, depending on what is discovered in the Phase I. A Phase I ESA can provide qualification under one of the three landowner liability protections (LLP); these are innocent landowner defense (ILD), contiguous property owner (CPO), and bona fide prospective purchaser (BFPP). In general in order to qualify for these protections, the Phase I ESA and AAI must be done before acquisition.

A Phase II ESA is a more detailed study prepared by a professional that involves sampling, chemical analysis. It is ordered when the Phase I study raises a concern, or does not address the environmental concerns of the user. Additionally, the Phase II can provide information related to non-LLP liabilities, such as: the presence of pollutants not covered by CERCLA, loss of property value, restrictions on future use, insurance issues, etc.

Policy:

1. Sumter County will consider the need for a Phase I ESA prior to every real estate acquisition.
2. Sumter County will require a Phase I ESA when:
 - a. Federal funds are being used or will be used on the project.
 - b. Federal lands are involved.
 - c. General knowledge of the area, as determined by the County Administrator, Deputy County Administrator, Planning and Development

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- Director, or Public Works Director indicates the potential for contamination on the site.
- d. Informal assessment by any authorized County Staff member suggests the potential for contamination on the site.
 - e. Required or suggested by FDEP or FDOH.
3. The Phase I ESA will include an opinion of the need for additional/all appropriate investigation (AAI), if any.
 4. Sumter County will require a Phase II ESA when:
 - a. The Phase I ESA is inclusive, the AAI indicates the need for further investigation, or the Phase I indicates the need for a Phase II.
 - b. Directed by the BOCC or County Administrator.
 5. Sumter County will employ professional environmental engineers to conduct either the Phase I or Phase II ESA.
 6. Funding for the ESAs will be as directed by the BOCC and County Administrator.

References:

Florida Engineering Society Journal, September 2010
FDEP Waste Clean Up Section, Southwest District